

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J., by her next friend and mother,
HEATHER JACKSON,
Plaintiff,

v.

Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge

WEST VIRGINIA STATE BOARD OF EDUCATION,
HARRISON COUNTY BOARD OF EDUCATION,
WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION, W. CLAYTON BURCH
in his official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants,

And

LAINEY ARMISTEAD,
Defendant-Intervenor.

**NOTICE OF SUPPLEMENTAL AUTHORITY IN
SUPPORT OF WVSSAC's PENDING MOTIONS**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy, Shannon M. Rogers and Shuman McCuskey Slicer PLLC, and notifies the Court of supplemental authority¹ that came before the Court in another context and in the form of an admission by the Plaintiff, as follows.

As part of pretrial motions, Plaintiff, State and Intervenor have briefed issues relative to WVSSAC's 30(b) testimony.² As part of that process, Plaintiff wrote that **"Mr. Dolan is not a legislator and did not have any input on whether or if H.B. 3293 was enacted."**³

¹ *Cordish Cos. v. Affiliated FM Ins., Co.*, 573 F. Supp.3d 977, 988 (D. Md.2021).

² ECF No. 276-1 at 120-21; ECF No. 287 at 4-5; ECF No. 288 at 5.

³ ECF No. 470 at 2 (emphasis added).

Plaintiff's admission constitutes supplemental authority in support of WVSSAC's dispositive motion in that Plaintiff has produced no evidence that WVSSAC will have a role in implementing H.B. 3293 and now has admitted against interest that **"Mr. Dolan is not a legislator and did not have any input on whether or if H.B. 3293 was enacted."**⁴ Plaintiff's admission constitutes supplemental authority in support of WVSSAC's motions in *limine*, in particular, relative to the State Board's Green Book (Exhibit H to the Blatt Deposition)⁵ and relative to Plaintiff's proposed use of Mr. Dolan's emails and texts relative to HB 3293,⁶ including those with Senator Baldwin and/or Melissa White.⁷

WVSSAC has filed a motion for leave and a proposed surreply. In the interim, however, with Plaintiff's admission that further distances Mr. Dolan from the legislative process and with Plaintiff's failure to discover more of the background, meaning and/or intent of any of these communications, WVSSAC renews its motions⁸ pending before the Court at this time.

WVSSAC seeks the relief this Court deems just.

⁴ ECF No. 470 at 2 (emphasis added).

⁵ ECF No. 390; ECF No 391 at 4.

⁶ ECF No. 392.

⁷ ECF No. 437 at 6. See also *Dobbs v. Jackson*, 597 U.S. ___, [28] (2022), stating that "[t]his Court has long disfavored arguments based on alleged legislative motives. See, e.g., *Erie v. Pap's A. M.*, 529 U. S. 277, 292 (2000) (plurality opinion); *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 652 (1994); *United States v. O'Brien*, 391 U. S. 367, 383 (1968); *Arizona v. California*, 283 U. S. 423, 455 (1931) (collecting cases). The Court has recognized that inquiries into legislative motives "are a hazardous matter." *O'Brien*, 391 U. S., at 383."

⁸ See, e.g., ECF Nos. 276 (335), 289 (439), 290 (439), 392 (456).

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

/S/ Roberta F. Green

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CERTIFICATE OF SERVICE

I hereby certify that I, Roberta F. Green, have this, the 19th day of September, 2022, served a true and exact copy of the foregoing **“Notice of Supplemental Authority in Support of WVSSAC’s Pending Motions”** with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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